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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Numbering Resource Optimization	)	**CC Docket No. 99-200**
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	**CC Docket No. 96-98**
	)	
	)	
Telephone Number Portability	)	**CC Docket No. 95-116**

To: The Commission

PETITION FOR RECONSIDERATION

WebLink Wireless, Inc. ("WebLink"), by its attorneys and pursuant to Section 1.106 of the Commission's Rules, hereby files its Petition for Reconsideration ("Petition") of the Third Order,[1] with respect to the Commission's failure to impose a blanket prohibition against mandatory number take-backs in the context of service-specific and technology-specific overlays ("SOs"). WebLink requests that the Commission reverse its position and impose a blanket prohibition against *any* number take-backs.

I. STATEMENT OF INTEREST

WebLink Wireless, Inc. is a leader in the wireless data industry. The Dallas-based company provides two-way wireless messaging, wireless email, mobile Internet

[1] Third Report and Order and Second Order on Reconsideration, FCC 01-362, released December 28, 2001, 67 Fed. Reg. 6431 (2002)(the "Third Order").

information, customized wireless business solutions, telemetry, and paging to more than 1.5 million business and retail customers. WebLink is the wireless data network provider for many of the largest telecommunication companies in the U.S. who resell WebLink services under their own brand names. WebLink's multicast network covers approximately 90 percent of the U. S. population and, through roaming agreements, extends throughout much of North America.

WebLink has actively participated in earlier proceedings related to Numbering Resource Optimization. In 1994, its predecessor, PageMart, Inc., was one of the Petitioners requesting a declaratory ruling with respect to a service-specific overlay resulting in the Ameritech Order,[2] in which the Commission declared that take-backs were discriminatory and therefore, unlawful. WebLink participated in the Notice of Proposed Rulemaking phase of this referenced proceeding as a member of PCIA. Also through its membership in PCIA, it has participated in other significant proceedings related to Numbering Resource Optimization. [3]

WebLink, and its customers, will be adversely affected by the Commission's refusal to impose a prohibition on mandatory number take-backs because it will require WebLink: (i) to expend time, effort and financial resources to reprogram its infrastructure

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2 Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, IAD File No. 94-102, Declaratory Ruling and Order, 10 FCC Rcd 4596, ¶¶20, 37 (1995)("Ameritech Order").

3 See, for example, PCIA's Comments on Iowa Utilities Board Petition for Diligence of Additional Authority, NSD File No. L-01-74, CC Dockets No. 96-98 and 99-200 on Number Resource Optimization filed March 7, 2001; In the Matter of Numbering Resource Optimization CC Docket No. 99-200, Connecticut Department of Public Utility Control Petition for Rulemaking to Amend the Commission's Rule Prohibiting Technology-Specific or Service-Specific Area Code Overlays, Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 987 Area Codes, California Public Utilities commission and the People of the State of California Petition for Waiver to Implement a Technology-Specific or Service-Specific Area Code; Bell Atlantic Nynex Mobile Inc., Petitioner, v. FCC and the USA, Respondents. Docket No. 97-1378 – PCIA Disclosure Statement: June 25, 1997; PCIA Motion For Leave to Intervene: June 25, 1997.

equipment, as well as its operational support systems including its billing and records database and; (ii) to change its customers' phone numbers which will cause major interference with its customer relations and the inevitable loss of customers. In the current email driven environment, a number has become an address. These numbers are used to contact individuals via email as well as being printed on customer cards, letterhead and brochures. If they are changed, the customer must reprint these materials and notify all email and other contacts that the number has changed, since there is generally no referral informing the caller of the number change. This would create significant hardship for wireless customers.

Any take-back will be very disruptive and costly to the paging industry which is struggling to provide competitive choices for subscribers. As the Commission noted in its Sixth Report,[4] the subscribership and revenues in the paging/messaging industry have declined, with the number of one-way subscribers falling 2.2% in 2000 alone. In addition, three of the top five paging companies have filed for bankruptcy under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§101 et seq since January 1, 2000. [5] Another paging company was liquidated under Chapter 7. It is clear then that the paging industry simply cannot afford any additional costs associated with regulatory decisions and the Commission is obligated to consider such industry disruptions in its regulatory actions. See, for example, First Report and Order, Access Charge Reform.[6/]

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4 Annual Report and Analyses of Competitive Market Conditions With Respect to Commercial Mobile Services, 16 FCC Rcd 13350, 13402-13404 (2001)

5 WebLink Wireless Inc. filed for Chapter 11 bankruptcy May 23, 2002 in the Northern District of Texas, Dallas Division, Case Nos. 01-34275-SAF-11, 01-34277-SAF-11, 01-34279-SAF-11.

6 First Report and Order, Access Charge Reform 12 FCC Rcd 15985, 16002 (1997).

II.

TAKE-BACKS SHOULD BE PROHIBITED

A. The Commission Ignored Consensus

In the Second FNPRM,[7] the Commission stated that it tentatively concluded that transitional technology-specific overlays may not include mandatory take-backs because of the costs imposed on carriers and their customers, "who would suffer the cost and inconvenience of surrendering their existing phone number, reprogramming their equipment, changing to new numbers, and informing callers of the new numbers." The Commission pointed out that these take-backs would exclusively affect those carriers included in the overlays, and that this would cause disparate treatment and "would thus adversely affect competition."[8] The Commission has an obligation to consider such adverse affects to avoid creating hardships. [9]

The majority of commenters in the Second FNRPM proceeding commended the Commission for its strong position on take-backs and added their arguments against take-backs. BellSouth Corporation stated that take-backs were not necessary to a transitional SO and that any mandatory take-back arrangements would make a phased-in overlay less attractive to state commissions because of the hardships those arrangements would require.[10] The Cellular Telecommunications & Internet Association ("CTIA") asserted

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7 Numbering Resources Optimization and Petition for Declaratory Ruling and Request for Expedited Action on July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, CC Docket Nos. 99-200 and 96-98, Second Report and Order, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 16 FCC Rcd 306(2000) ("Second Report and Order" and "Second FNPRM").

8 Second FNPRM at 364.

9 See PSWF Corporation v. FCC, 108 F.3d 354, 356 (D.C. Cir 1997), citing Order, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, 8 FCC Rcd 2460 (1993).

10 BellSouth Corporation Comments at 8.

that allowing states to require customers to change their telephone numbers would harm consumers and "undermine the implementation of competitively neutral numbering conservation measures."[11] The Illinois Commerce Commission ("Illinois") recognized that "mandatory 'take-backs' may have an adverse impact on competition..."[12] The Public Utilities Commission of Ohio ("PUCO") stated that "'Take-backs' would impose a hardship on consumers and could create a negative, competitive effect on the technology-specific industry, such as wireless carriers."[13] The Personal Communications Industry Association ("PCIA") "wholeheartedly" supported the "Commission's reaffirmation of the unlawful nature of 'take-backs'", adding that in SOs, "such costs would be imposed solely on carriers using that technology or providing that service and their customers, and thus would unlawfully discriminate against those carriers in favor of other carriers."[14] Verizon Wireless stated that the Commission "recognized that take-backs of numbers from wireless carriers would be severely anti-competitive."[15] VoiceStream Wireless added that take-backs "would exclusively affect customers of non-LNP-capable operators, and to do so would be unreasonably discriminatory."[16] AT&T Wireless and Cingular Wireless also opposed take-backs.

In the Third Order, the Commission reiterated its previous arguments for prohibition of take-backs and stated, correctly, that most commenters opposed mandatory

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11 CTIA Comments at 8.

12 Illinois Comments at 9.

13 PUCO Comments at 9.

14 PCIA Comments at 8.

15 Verizon Wireless Comments at 8.

16 VoiceStream Wireless Comments at 6.

take-backs.[17] Nevertheless despite this consensus, the Commission declined to impose a blanket prohibition against take-backs for three reasons: the use of the take-backs *may* enhance the effectiveness of SOs by freeing up numbering resources in the underlying area code; take-backs *could* increase the life of the underlying NPA, which in turn would preserve the geographic identity of a given area; and creating SOs without freeing up numbering resources in the underlying area code *may* not provide meaningful benefits because the life of the underlying NPA *would not likely* be significantly prolonged, however, the Commission counter-argued that there *could* be some benefit in any event because the demand of additional numbering resources in the underlying NPA would be reduced by the overlay.[18] (Emphasis added.) Based on this discussion, it is clear that the Commission has no decisive evidence that the underlying NPA would or would not benefit by an SO without a take-back.

Despite its positions in both the Second and Third Orders objecting to take-backs and the fact that most commenters opposed mandatory take-backs due to real discrimination to carriers involved in the overlays, the Commission declined, based on at best speculative rationale, to establish a prohibition on take-backs. Instead, it has instituted a take-back procedure that is convoluted and appears destined for litigation. [19] This is not reasoned decision-making.[20]

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17 Third Order at ¶88.

18 Third Order at ¶89.

19 In its description of the procedure for the states to show necessity for take-back, the Commission has given no other guidelines, even as to the size of number blocks.

20 See United States Telecom Association, et al. v. Federal Communications Commission, 227 F.3d 450, 461 (D.C. Cir. (2000). ("Fundamental principles of administrative law require that agency action be 'based on a consideration of the relevant factors,' Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971),... and rest on reasoned decision-making in which 'the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made,'" Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)).

B. Mandatory take-backs are discriminatory

In the Ameritech Order, take-backs were declared to be unlawful and it therefore follows that take-backs should be forbidden. Notwithstanding this precedent, in the Third Order the Commission seems to reverse its position on the lawfulness of take-backs. Yet, there was no explanation or discussion on the reasons why it was changing its position. While the FCC can change its course, it must supply a reasoned analysis in support of such change. There is no such analysis here.[21] WebLink submits that the Commission's hypothetical rationale cannot overcome the unlawful and discriminatory effect of allowing *any* take-backs to the specific groups of carriers which would be subject to overlays, under any circumstances.

In the Ameritech Order, the Commission found that Ameritech's plan to overlay a nearly exhausted area, was discriminatory with regard to wireless carriers because of its exclusion and segregation proposals in the SO. By excluding wireless carriers from access to an area code and segregating them from wireline carriers, Ameritech would have given competitive advantage to wireline carriers who would be able to retain the existing area code for their subscribers.[22] Similarly, the take-back provisions would have given the wireline carriers competitive advantage because the customers of the wireless carriers would "suffer the cost and inconvenience of having to surrender existing

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21 "But an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute." Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir 1970); See also, AT&T Corporation, v. FCC, 236 F. 3d 729, 736 (D.C. Cir. 2001) ("The FCC 'cannot silently depart from previous policies or ignore precedent' citing Committee for Community Access v. FCC, 737 F.2d.)

22 Ameritech Order at 4607.

numbers and go through the process of reprogramming their equipment, changing over to new numbers and informing callers of the new numbers."[23]

Accordingly, the Commission found that the plan violated prohibitions against unjust or unreasonable discrimination in the Communications Act of 1934, as amended (the "Act"), in particular, Sections 202(a) and 201(b) of the Act. Section 202(a) requires that common carriers cannot make any "unjust or unreasonable discrimination" with "like communication service."[24] Section 201(b) requires that all common carrier "practices, classifications and regulations for and in connection with...communications service...be just and reasonable..." and declares unlawful "any unjust or unreasonable practice, classification, or regulation."[25]

Thus, the Commission has before it existing precedent which has established, based on the Communications Act, that take-backs are an unjust or unreasonable practice and are therefore unlawful. No circumstances have intervened that have altered this decision.

III.

SUMMARY

The fragile state of the paging industry; the disruption, cost and inconvenience to carriers and customers alike; the fact that commenters and the Commission all agree that take-backs are harmful and unnecessary; and the Commission precedent that declared take-backs to be unlawful and discriminatory dictate that the Commission must prohibit take-backs.

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23 Ameritech Order at 4608.

24 See 47 U.S.C. §202(a).

25 See 47 U.S.C. §201(b).

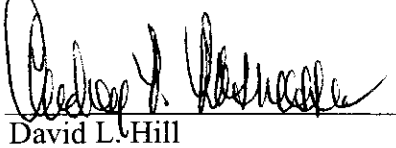
IV.

CONCLUSION

For the foregoing reasons, WebLink Wireless respectfully requests that the Commission reconsider its decision and prohibit number take-backs.

Respectfully submitted,

WEBLINK WIRELESS, INC.



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Dated: March 14, 2002

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 14th day of March, 2002, a true and correct copy of the above and foregoing **PETITION FOR RECONSIDERATION** was sent by U.S. Mail, with proper postage thereon fully paid, to:

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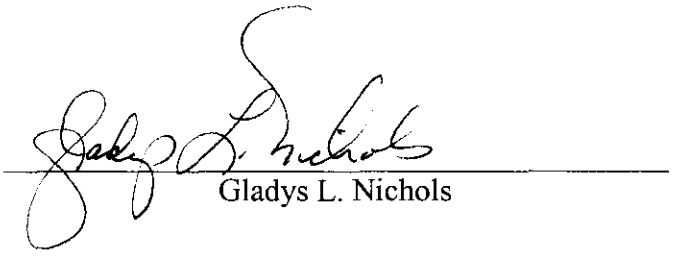

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